

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 19852 of 1993

Between:

Hindustan Steel Works Constructions Ltd.,
a company incorporated under the Companies Act, 1956
having its registered office at No. 1, Shakespeare Sarani,
8th Floor, Calcutta-71, and having its works amongst other
places at the administrative Bldg: Visakhapatnam Steel
Project, Visakhapatnam.

..... PETITIONER

AND

- 1 The Presiding Officer,
Industrial Tribunal-cum-Labour Court, Visakhapatnam.
- 2 Prabhudayal Kesharwani, S/o. Indrajeet Prasad.
M.P.H.B./C, 37, Industrial Office,
Bhilai-490 026.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records pertaining to the award dated October 4th, 1993 in I.D.No.122/88 on the file of the learned 1st respondent herein Viz., the Presiding Officer, Industrial Tribunal-cum-Labour Court Visakhapatnam and quash the said award by the issuance of a Writ, more particularly in the nature of a Writ of Certiorari or any other appropriate writ order or direction as this Hon'ble court may deem fit including the costs of these proceedings.

Counsel for the Petitioner: MR.C.R.SRIDHARAN

Counsel for the Respondent No.1: None appeared.

Counsel for the Respondent No.2: MR.E.D.NATHAN

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.19852 of 1993

ORDER:

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The petitioner, a management, filed this Writ Petition, *inter alia*, seeking a Writ of Mandamus challenging the award dated 04.10.1993 in I.D.No.122 of 1988 on the file of the Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam.

Heard the learned for the petitioner. Though the matter has been coming up for quite a long time, none appeared on behalf of the contesting respondents.

The case of the petitioner, in brief, is that it is a Government of India undertaking company, doing business of construction of various national projects, dams, etc. whereas the second respondent, an employee, joined the petitioner company on 23.03.1997 as Construction Assistant Grade-III at Bhilai and later on he was promoted as Construction Assistant – II(c), and accordingly he was working at relevant point of time at Visakhapatnam. Having regard to certain discrepancies, which have been coming to the notice of the petitioner during 1985-1986 regarding availing of Liberalized Leave Travel Concession, obtaining of certain transport allowances and medical claims, the second respondent was issued charge sheets dated 16.03.1985 and 28.03.1986. After enquiry, having found that

the charges are proved, the services of the second respondent were terminated by the petitioner-management as per the order dated 02.03.1987. Thereupon, the second respondent raised a dispute by invoking provisions of Section 2-A(2) of the Industrial Disputes Act and ultimately, the same was referred to the first respondent i.e. the Industrial Tribunal-cum-Labour Court at Visakhapatnam, which was taken up as I.D.No.122 of 1988.

During enquiry, both sides were directed to produce evidence in support of their respective cases. Accordingly, the second respondent was examined as W.W.1 and documents Exs.W1 to W6 were marked on his behalf, and on behalf of the petitioner-management M.W.1 to M.W.4 were examined as witnesses and further, documents in Exs.M1 and M40 were marked in its support.

Considering the said evidence and perusal of material on record, the first respondent held that the petitioner management has failed to prove charges levelled against the delinquent i.e. the second respondent, under the two charge sheets and therefore, passed the impugned award directing the petitioner to reinstate the second respondent into service with full back wages and attendant benefits, within a month of receiving copy of the award failing which to pay the amount due to the petitioner with interest @ 12% p.a. from the date of the award till the date of payment.

Challenging the correctness of the findings arrived at and the ultimate award, the learned counsel appearing on behalf of the petitioner strenuously contended that the findings arrived at are totally perverse and unsustainable. Even though the petitioner has substantiated its case through clinching evidence, the same was not given proper credence and therefore, it is erroneous to hold that the petitioner-management failed to prove the charges. In respect of each charge as framed and the evidence on record, it was contended that the

same has been substantially proved, and the Tribunal ought not to have held that there is any failure on the part of the petitioner-management. The learned counsel by going through each of the charge, the evidence and the material on record vis-à-vis the findings arrived at, contended that the award is liable to be set aside and the action of the petitioner-management should be affirmed in termination of services of second respondent as valid.

Considering the submissions made and on perusal of the material, the question which falls for consideration in this case is as to whether the impugned award is not sustainable on the ground that the findings arrived at by the Tribunal are perverse and not supported by any evidence and material ?

There is no dispute to the fact that the second respondent was an employee of the petitioner and the charges framed against him pertains to the alleged false claim made towards transport allowances and concession and the medical claims in respect of Leave Travel Concession availed by him. In this connection, the petitioner-management has issued two charge sheets, one on 16.05.1985 containing charges 1 to 3, and the other on 28.03.1986 containing charges 1 and 2.

The charge no.1 in the first charge sheet was that the second respondent had submitted a false claim towards the Leave Travel Concession for the block years 1978-1981 for an amount of Rs.3,648/- and cash memos for Rs.724-50 ps. towards purchase of diesel for his alleged travel from Bhilai to Pahalgan, Jammu & Kashmir, by car No.MPT-67. In support of it, it was stated that Ex.M6 marked on behalf of the petitioner herein, shows that the car bearing No.MPT-67 belongs to one Mr.K.N.Singal of M/s.Amar Engineering Works. It is stated to be, in fact, a petrol driven car and not a diesel one, whereas the claim being towards diesel charges. Further, it was

also pointed out that the entire bills were issued by one single filling station i.e. M/s.Eastern Highway Service Station and the total of the quantity shown, goes more than the capacity of the tank. Considering this, the Tribunal has held that even on the facts and circumstances, it can not be said that the second respondent did not travel to Pehalgaon by that car and it also can not be said that the management has proved that the second respondent did not travel at all by car. While considering the same, it discloses that the family of the second respondent travelled along with his friends, who have engaged not only the said car but also another car and traveled. Therefore, it was found by the Tribunal that it can not be inferred that the second respondent did not travel to Pahalgaoon on consideration of the very same evidence.

In respect of charge no.2 also, which pertains to claim of a sum of Rs.2,778/- for travel of himself and family by first class accommodation in train, the petitioner sought to place reliance on Exs.M8 to M11, and also regarding the transportation bill for Rs.1,200/- for his house hold articles, the petitioner placed reliance on Exs.M13. Even reading along with Exs.W6, it was held by the Tribunal that even in this respect, there is no sufficient evidence to prove that the second respondent did not travel against the aforesaid tickets as mentioned and the management has failed to prove the same charge. Further, it is also held that the evidence as produced is not sufficient to prove that the second respondent did not transport his goods through the said company in the truck mentioned in the receipt.

In respect of charge no.3 pertaining to claim for Rs.1,606/- for travelling of himself and for his family in the first class accommodation, considering the evidence produced on behalf of the petitioner in Exs.M8 to M11, M21 and M22, and Exs.M16 to 19, the Tribunal on appreciation of the same held that the evidence as

produced by the petitioner, is not sufficient to prove that the second respondent did not travel while availing the Leave Travel Concession and further that the bill claimed by him is in any false.

In the second charge sheet, charge no.1 pertains to the claim for block years 1982-1985 for the travel from Waltair to Jammu Tawi by first class accommodation, in respect of which the petitioner sought to place reliance on Exs.M27 to M31, which on consideration, were held to be not at all sufficient to hold that the second respondent did not travel as claimed by him. As regards the charge no.2 in the second charge sheet pertaining to medical claims, which alleged to have been supported by non-genuine prescriptions and non-genuine cash memos, the petitioner placing reliance on Exs.M32 to 35, it was held by the Tribunal that the said evidence as produced, is not sufficient to hold that the second respondent had produced a false case claiming treatment for himself and his family.

On appraisal of the entire evidence and also the findings as arrived at, it is to be seen that the said findings are purely that of fact and it can not be said that the same are in any way vitiated by any perversity. The entire burden as casting on the petitioner-management has totally remained unsubstantiated as held by the Tribunal. Even the evidence as produced by it, would not in any way implicate the petitioner in any of the charges. This Court in exercise of the powers conferred under Article 226 of the Constitution of India, can not go into all such evidence and material to come to any different conclusion. In the circumstances, I do not find any merits in the Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

Date: 03.11.2004

DRK

Copy to:

- 1 The Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam.
- 2 Two CD copies.